

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 06-CF-1766
)	
LUIS JARAMILLO,)	Honorable
)	Daniel P. Guerin,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly summarily dismissed defendant’s postconviction petition, which alleged that his guilty plea was coerced by counsel: defendant’s claim was foreclosed by the record of his plea hearing, during which he assured the court that he had not been coerced, and in any event defendant did not show arguable prejudice, as he did not articulate either a claim of actual innocence or a plausible defense.

¶ 2 Defendant, Luis Jaramillo, appeals from an order summarily dismissing his petition under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2010)). He argues that his petition stated the gist of a constitutional claim “that his attorney coerced him into pleading guilty by misleading him concerning the consequences of rejecting a plea offer.” The appeal raises two

issues: (1) whether the record rebuts defendant's claim that his guilty plea was involuntary as the product of coercion; and (2) whether the petition otherwise states the gist of a claim of ineffective assistance of counsel. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On July 11, 2006, defendant was indicted on one count of home invasion (720 ILCS 5/12-11(a)(2) (2006)), one count of unlawful restraint (720 ILCS 5/10-3(a) (West 2006)), one count of attempted criminal sexual assault (720 ILCS 5/8-4(a), 12-13(a)(1) (West 2006)), and two counts of residential burglary (720 ILCS 5/19-3 (West 2006)).

¶ 5 On June 26, 2007, defendant pleaded guilty to home invasion, a Class X felony with a sentencing range of 6 to 30 years' imprisonment (730 ILCS 5/5-8-1(a)(3) (West 2006)), and the State nol-prossed the remaining counts. There was no agreement as to sentencing. The factual basis for the plea established that, on June 21, 2006, a 17-year-old girl (the victim) and her 4-year-old niece were in the victim's parents' apartment alone. Around 6 a.m., the victim heard a disturbance and called 911. Defendant then kicked down the apartment door, chased the victim into a bedroom, struck her in the head repeatedly, knocked her into a dresser, causing injury, and got on top of her on the floor. At that time, the police arrived and arrested defendant. The niece had been in the bedroom as this was happening. While talking to police, defendant admitted to kicking down the door and entering the apartment, hugging, touching, and getting on top of the victim, and never having authority to enter.

¶ 6 Prior to accepting defendant's guilty plea, the trial court inquired as to whether anyone had used force, threats, or promises to induce his guilty plea. Defendant replied no and agreed that he was pleading guilty of his own free will. The court found defendant's plea to be knowing and

voluntary and accepted his plea. Following a sentencing hearing, the trial court sentenced defendant to 24 years in prison.

¶ 7 The trial court denied defendant's motion for reconsideration of his sentence, and defendant appealed. We remanded for compliance with Illinois Supreme Court Rule 604(d) (eff. July 1, 2006). *People v. Jaramillo*, No. 2-07-1181 (2008) (unpublished order under Supreme Court Rule 23). On remand, counsel filed a Rule 604(d) certificate and a new motion for reconsideration of the sentence. The trial court again denied the motion. Defendant appealed, and we affirmed. *People v. Jaramillo*, No. 2-08-1193 (2010) (unpublished order under Supreme Court Rule 23).

¶ 8 On November 16, 2011, defendant filed a *pro se* petition under the Act (725 ILCS 5/122-1 *et seq.* (West 2010)), alleging that he received ineffective assistance of both trial and appellate counsel at various stages of the proceedings. As relevant here, defendant alleged that trial counsel "Utilized Threats and Coercion to Force Petitioner to Enter Plea of Guilty." According to defendant, counsel told him "that if [he] did not take a 25 year sentence that the State was going to charge [him] as a sexual predator and [he] would never get out of prison." Defendant further alleged as follows:

"[Defendant] subsequently learned after his plea of guilty[] that[,] in fact, though he could have recieved [*sic*] a thirty[-]year sentence for home invasion, he could not have been charged with being a sexual predator without first being indicted for such. The point [defendant] is making[] is that [counsel] not only tricked him, but he outright lied, all for the sake of a guilty plea in this case. [Defendant] entered into a guilty plea as an open plea on the advice of his attorney and the remaining charges to be dropped [*sic*] so he would not be charged with being a sexual predator, and the fact that [defendant] knew [that] his attorney

failed to prepare for trial and because [defendant] fear[ed] [that] he would be sentenced to the maximum, should he be convicted and as a result, he had no choice but to plead guilty.”

According to defendant: “There is no doubt, had it not been for this coercion and threats, the guilty plea phase would have been different; that is, there would have been a trial in which [defendant] is reasonably certain that with competent representation, that he would have been found innocent of the charge[s] against him.”

¶ 9 On February 10, 2012, the trial court summarily dismissed the petition as frivolous and patently without merit. As to defendant’s allegation that he was coerced into pleading guilty, the court found that the allegation was rebutted by the record, specifically defendant’s assurances at the guilty plea hearing that no one had used force, threats, or promises to induce his guilty plea.

¶ 10 This court granted defendant leave to file a late notice of appeal.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues that the trial court erred in summarily dismissing his petition, because his petition stated the gist of a constitutional claim “that his trial attorney coerced him into pleading guilty by misleading him concerning the consequences of rejecting a plea offer.” Defendant argues that, “[t]aking [his] allegation[s] as true, [counsel] misinformed him concerning the charge against him and warned him that, if he refused to plead guilty, he would spend the rest of his life in prison after being convicted as a sexual predator.” He maintains that his claim “is more than a mere claim of ineffective assistance of counsel; in essence, [his] guilty plea was alleged to have been involuntary because of his trial attorney’s misstatements.” He claims that “counsel ‘lied’ and ‘tricked’ [him] into pleading guilty.” In response, the State maintains that the summary dismissal was proper, because defendant cannot meet the requirements of *Strickland v. Washington*, 466 U.S. 668 (1984).

¶ 13 The Act provides a procedural mechanism through which a defendant may assert a substantial denial of his constitutional rights in the proceedings that resulted in his conviction. 725 ILCS 5/122-1 (West 2010). At the first stage of a postconviction proceeding, the trial court independently reviews the petition, taking the allegations as true, and determines if it is frivolous or patently without merit. *People v. Tate*, 2012 IL 112214, ¶ 9; *People v. Hodges*, 234 Ill. 2d 1, 10 (2009). A petition should be summarily dismissed as frivolous or patently without merit only when it has no arguable basis in either fact or law. *Tate*, 2012 IL 112214, ¶ 9; *Hodges*, 234 Ill. 2d at 11-12. A petition lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as one that is completely contradicted by the record. *Hodges*, 234 Ill. 2d at 16. A petition lacks an arguable basis in fact if it is based on a fanciful factual allegation, such as one that is clearly baseless, fantastic, or delusional. *Id.* at 16-17. We review *de novo* the summary dismissal of a postconviction petition. *Tate*, 2012 IL 112214, ¶ 10.

¶ 14 We first address defendant's claim that his guilty plea was involuntary as a product of coercion. A guilty plea must be voluntary and intelligent. *People v. Blankley*, 319 Ill. App. 3d 996, 1007 (2001). Stated another way, a guilty plea may not be obtained by threats, coercion, or improper promises. See *People v. Pequeno*, 337 Ill. App. 3d 537, 544 (2003). Here, defendant claims that his petition stated the gist of a claim that his attorney coerced him into pleading guilty. We disagree. Before accepting defendant's guilty plea, the trial court held a colloquy with defendant pursuant to Illinois Supreme Court Rule 402 (eff. July 1, 1997). Defendant assured the trial court that he was pleading guilty freely and voluntarily. He assured the trial court that no one had forced or threatened him into pleading guilty. In short, defendant assured the trial court that he was pleading guilty of his own free will. Now, more than four years after the fact, defendant seeks to contradict his own

record statements. Specifically, he now insists that he pleaded guilty because of coercion rather than free will. In other words, defendant argues that, although he stated in open court that he had not been coerced into pleading guilty, he did not mean what he said.

¶ 15 This argument is unpersuasive. The purpose of the Rule 402 colloquy is to ensure that a defendant's guilty plea is not accepted unless it is intelligent and voluntary. *People v. Horton*, 250 Ill. App. 3d 944, 951 (1993). This purpose would hardly be served if a defendant were allowed to state on the record that his plea was voluntary and then turn around and claim that it was involuntary. It would reduce the Rule 402 colloquy to a meaningless exercise. See *People v. Robinson*, 157 Ill. App. 3d 622, 629 (1987). As the supreme court stated more than three decades ago, "Rule 402 was designed to insure properly entered pleas of guilty, not to provide for merely an incantation or ceremonial." *People v. Krantz*, 58 Ill. 2d 187, 194-95 (1974); see also *People v. Ramirez*, 162 Ill. 2d 235, 245 (1994) ("exhaustive admonitions cannot be disregarded as merely a ritualistic formality"). Thus, "a defendant cannot be rewarded for disregarding the specific admonitions of the court." *People v. Radunz*, 180 Ill. App. 3d 734, 742 (1989); see also *Robinson*, 157 Ill. App. 3d at 629 ("If a plea of guilty is to have any binding effect or is to be given any subsequent weight, the extensive and exhaustive admonitions given by the circuit court in this case and acknowledged by petitioner must be held to overwhelm petitioner's current assertion that he entered his plea involuntarily."). Thus, we reject defendant's argument that, although he stated that he was pleading guilty voluntarily, he had really been coerced into doing so.

¶ 16 Assuming, *arguendo*, that defendant's claim was not rebutted by the trial court's admonishment, defendant's petition was insufficient to establish a claim of ineffective assistance of counsel. A challenge to a guilty plea based on ineffective assistance of counsel is subject to the

standard set forth in *Strickland*. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985); *People v. Rissley*, 206 Ill. 2d 403, 457 (2003); *People v. Presley*, 2012 IL App (2d) 100617, ¶ 23. “To prevail on a claim of ineffective assistance under *Strickland*, a defendant must show both that counsel’s performance ‘fell below an objective standard of reasonableness’ and that the deficient performance prejudiced the defense.” *Hodges*, 234 Ill. 2d at 17 (quoting *Strickland*, 466 U.S. at 687-88). “At the first stage of postconviction proceedings under the Act, a petition alleging ineffective assistance may not be summarily dismissed if (i) it is *arguable* that counsel’s performance fell below an objective standard of reasonableness and (ii) it is *arguable* that the defendant was prejudiced.” (Emphases added.) *Id.* If the defendant did not suffer prejudice, then the defendant’s ineffectiveness claim fails and the court need not reach whether counsel’s performance was deficient. *People v. Evans*, 186 Ill. 2d 83, 94 (1999). Our supreme court has determined that a “bare allegation” that, absent counsel’s deficient performance, the defendant would have refused the plea and insisted upon going to trial is not enough to establish prejudice. *People v. Hall*, 217 Ill. 2d 324, 335 (2005). Rather, the defendant’s claim must be accompanied by either a claim of actual innocence or the articulation of a plausible defense that he could have raised at trial. *Id.* at 335-36. If the defendant cannot meet the prejudice prong of the *Strickland* test, we may affirm the summary dismissal of his postconviction petition. *People v. Pineda*, 373 Ill. App. 3d 113, 121 (2007).

¶ 17 Here, the summary dismissal was appropriate, because defendant cannot make a showing that he was arguably prejudiced, as he has not articulated either a claim of actual innocence or a plausible defense that he could have raised at trial. Defendant stated in his petition: “There is no doubt, had it not been for this coercion and threats, the guilty plea phase would have been different; that is, there would have been a trial in which [defendant] is reasonably certain that with competent

representation, that he would have been found innocent of the charge[s] against him.” However, such a claim did not amount to a claim of actual innocence or a plausible defense that could have been raised at trial. The only possible defense alluded to in the petition was one of voluntary intoxication, which, as the State points out, was not available to defendant, because the legislature had removed voluntary intoxication as an affirmative defense prior to the date of defendant’s offense. See 720 ILCS 5/6-3 (West 2002). Defendant made no claim of actual innocence. Thus, defendant did not establish arguable prejudice and this claim was properly dismissed as frivolous and patently without merit.

¶ 18 In his reply brief, defendant argues that he was not required to articulate a claim of prejudice. He claims that “an allegation that a guilty plea was involuntary due to ineffective assistance of counsel requires an evidentiary hearing.” However, the cases that defendant relies on to support this argument are not persuasive. To be sure, in *People v. Munday*, 153 Ill. App. 3d 910, 914 (1987), and *People v. Owsley*, 66 Ill. App. 3d 234, 238-39 (1978), the courts reversed dismissals of postconviction petitions, which alleged that the defendants’ guilty pleas were induced by ineffective assistance, without considering prejudice. However, such an analysis is no longer proper. It is now settled that, to avert a summary dismissal, the defendant must show prejudice (*Pineda*, 373 Ill. App. 3d at 120), even where the ineffective-assistance claim concerns the entry of a guilty plea (*People v. Ramirez*, 402 Ill. App. 3d 638, 643 (2010)). Here, defendant has failed to do so.

¶ 19

III. CONCLUSION

¶ 20 For the reasons stated, we affirm the summary dismissal of defendant’s *pro se* postconviction petition.

¶ 21 Affirmed.